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Conference

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
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3 UNITED STATES OF AMERICA,

4 v.

21 CR 412 (JSR)

5 JEVVAUN CHARLES,

6 Defendant.

7-----x  
8 New York, N.Y.  
9 July 22, 2021  
4:00 p.m.

10 Before:

11 HON. JED S. RAKOFF,

12 District Judge

14 APPEARANCES

15 AUDREY STRAUSS

16 Acting United States Attorney for the  
Southern District of New York

17 JACOB H. GUTWILLIG

Assistant United States Attorney

18 DONNA R. NEWMAN

19 Attorney for Defendant Charles

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1 (Case called)

2 MR. GUTWILLIG: Good afternoon, your Honor.

3 Jacob Gutwillig, for the government.

4 THE COURT: Good afternoon.

5 MS. NEWMAN: Good afternoon, your Honor.

6 Donna R. Newman, on behalf of Mr. Jevaun Charles, who  
7 is standing next to me.

8 Thank you, your Honor.

9 THE COURT: So, this is a bail application. So,  
10 please, be seated, and let me hear first from defense counsel.

11 MS. NEWMAN: Yes, your Honor.

12 As I understand it, it is the government that has the  
13 burden here and that they're asking for detention and that I  
14 have advised them of my bail package and they, nonetheless,  
15 have assured me in conversations that it is their position that  
16 there are no conditions that will assure the safety of the  
17 community or Mr. Charles.18 THE COURT: Yeah. Well, I think they're basing that  
19 it seems like, and Pretrial Services seems to feel the same  
20 way, that unfortunately, Mr. Charles has a substantial record  
21 beginning with an arrest for second degree robbery at age 14, a  
22 youthful offender adjudication on the charge of forcible theft,  
23 armed with a deadly weapon at age 15, a youthful offender  
24 adjudication on the charge of robbery involving use or  
25 threatened use of a dangerous instrument at age 16, all this

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1 followed by four criminal convictions since he became an adult.  
2 In 2018 he was convicted of criminal possession of a firearm.  
3 A year later he was convicted of third degree robbery, plus  
4 criminal sale of a controlled substance, plus second degree  
5 assault.

6 I have to say, having nothing to do with this  
7 application per se that when I read a record like that, I  
8 always feel that society has failed in some way this fellow.  
9 This fellow has been engaged it would seem in criminal activity  
10 since a very early age. I am concerned. And this does relate  
11 to the bail application, a bail whether he thereby poses a  
12 danger to the community, but I am also concerned, to be frank,  
13 about why he's embarked on this career of criminality and what  
14 can be done to turn it around.

15 But let's stick with the bail application for now.

16 MS. NEWMAN: Thank you, your Honor.

17 I can address that. I always like to hear from the  
18 government first but I think your Honor is, part of what the  
19 government is going to assert is exactly what probation, the  
20 Pretrial Services has said, your Honor. But I think you can  
21 look at it carefully. This is what you see. And I have some  
22 facts that I think add to round out what actually happened.

23 So, first thing that becomes glaring is from aged 16  
24 to age 23, there's no arrests at all, not even a DUI, nothing.  
25 Mr. Charles has worked. He's a member of a union, a cement

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1 union. He's consistently worked. So, 2018 we have four  
2 arrests. He is convicted on the same day. He pleads on the  
3 same day and is sentenced on the same day for all four and in  
4 total, total, he gets three years. So, while there's all these  
5 allegations, we end up with a case where the judge with  
6 complete history and understanding with the prosecutor there,  
7 gives him a total of three years. And today, and that's why  
8 we're here today, your Honor, actually, would be his time to be  
9 released on parole.

10 So, if we look at it -- and I think exactly, what I  
11 have asked my client -- so, what was happening in 2018 because  
12 we know from 16 to 23 you were working. Well, he was laid off.  
13 He had a lot of problems, emotional problems that he was going  
14 through, personal problems and he has admitted that that was a  
15 period where he was smoking more and more marijuana. It does  
16 not excuse it. But what's also very clear from this record and  
17 very important for this Court's consideration is he always  
18 appeared in court.

19 THE COURT: Yes. I don't think, unless the government  
20 tells me otherwise, that they're claiming that he is a flight  
21 risk. I think it's all based on the danger to the community  
22 problem. Let me just see if that's correct.

23 MR. GUTWILLIG: Yes, your Honor, dangerousness.

24 MS. NEWMAN: But I also think it's important as to  
25 dangerousness and the recognition that he does abide once he is

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1 released for once arrested on conditions to appear and I think  
2 that does have do with it. But I understand where the Court  
3 was going and thank you. So, I won't address the flight risk  
4 that much.

5 So, I think that that's important. Now, let's look at  
6 the juvenile record.

7 Let me go back, because on 2018, I also want the Court  
8 to know that he was, because he was smoking, because he was  
9 misbehaving, he was not living with his mother. Now, why is  
10 that important for the Court's consideration? Because in my,  
11 who is present -- I am sorry. Ms. George is here and so, as  
12 well is Mr. Charles' son. And he is very thankful to the  
13 marshals that they have allowed him to turn around and speak  
14 with his son who is ten-years-old.

15 So, he was having problems. He needed -- it doesn't  
16 excuse it. He pled guilty. So, we're not saying -- but in any  
17 event, understanding what was happening, his mom through him  
18 out. Why is that important? Because part of my bond package  
19 and I am offering his mother as a third-party custodian. Going  
20 back to that then is something important about the juvenile  
21 offenses.

22 So, the juvenile offenses when we look at them, what  
23 happened is that he was, the robbery had to do with a temporary  
24 possession of a weapon. There was an altercation with an  
25 individual who turned -- and others were present -- who turned

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1 out to be an off-duty policeman but he never identified  
2 himself. And the altercation was started, according to what I  
3 understand that the record would reflect, the officer who then  
4 pulled out a gun, hit my client. My client took the gun. I  
5 have no idea if it was loaded or not. It wasn't his gun. And,  
6 yes, he went after the police officer, not to fire it. Took it  
7 and then ran away. So, he never did assault but it was  
8 robbery. He then dropped it a block later. So, the robbery is  
9 based on this temporary possession of the firearm that wasn't  
10 his.

11 So, if you were looking at all the charges you could  
12 say my God. But then what does he get? He gets one to three  
13 years. So, we know that, and at the same time is the other  
14 offense is adjudicated. So, this one to three runs concurrent.  
15 And that's the same with all the four offenses that your Honor  
16 mentioned. And I'm not sure. I think one is on appeal of the  
17 four offenses but it doesn't matter at this point. There would  
18 be a technical issue. It's not as significant. But I think  
19 that's what speaks when we talk about this conviction and we  
20 talk about that is he a danger.

21 So, let me offer my package, as well as some of the  
22 history and I think that after the Court hears that, the Court  
23 will understand why I believe that we have met our burden which  
24 is not a very heavy burden of putting forth some evidence to  
25 rebut the presumption which we concede is applicable here and

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1 that the government's been having a very difficult time to  
2 build clear and convincing evidence.

3 So, let me tell you the package. I am offering three  
4 suretors, Ms. George, who is present, his mom. And he would be  
5 living with his mom at the same residence that he's lived his  
6 entire life, a residence in the Bronx where she's lived,  
7 she's -- 25 years, I guess more than that, 28 years. She works  
8 part-time and the home is a three-bedroom home. And so, there  
9 would be a bedroom, obviously, for her son that was his  
10 bedroom. We are offering her as a third-party custodian. So,  
11 my point when he was misbehaving she had nothing to do with  
12 him.

13 But this is also important that juvenile offense there  
14 was really no evidence that, my client's involvement. There  
15 are others involved. When he came home and he told his mom  
16 what happened, she took him by the hand and said we're going to  
17 do the right thing. And they went to the police and he told  
18 and made a confession, without which there would not have been  
19 a conviction. So, Ms. George knows right from wrong and she  
20 would make an excellent third-party custodian because the  
21 slightest thing, she is calling up and saying come get him.

22 We're offering GPS, home detention. Although,  
23 Ms. George has paid his union dues so that when he were to come  
24 home he would have, his union job is waiting for him but we  
25 understand.

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1                   And so, I've spoken with my client despite the fact  
2 that he would like to be able to contribute to the household,  
3 obviously, which he always did. He would not be able to work  
4 at this time and --

5                   THE COURT: What about the other two co-signers? Tell  
6 me about them.

7                   MS. NEWMAN: OK. Then we're also offering his sister  
8 with whom he's very close.

9                   THE COURT: What does she do?

10                  MS. NEWMAN: She works in the roofer's union. She is  
11 27-years-old -- excuse me -- 34-years-old. I apologize. She's  
12 a roofer. She also lives in the Bronx. She has two children  
13 that she supports. She gets child support and she earns about  
14 \$60,000 a year. She has no record, no bankruptcy.

15                  We are also offering his significant other who he's  
16 been with for about six years. Her name is Ashay Russell.

17                  Okay. I pronounced it right. She is 27. She works as a  
18 juvenile detention counselor. She's worked there for about  
19 three years, and she earns about \$48,000 a year. I believe  
20 that she is on her way but she was stuck in traffic.

21                  His sister could not get the day off. But I've a  
22 spoken to her twice to confirm this information. And more  
23 importantly, that she would be willing to be a suretor and they  
24 are very close.

25                  He has six other siblings of which he's close and they

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1 all live in the area. He has always lived in the Bronx. This  
2 is his community. He has ties to the Bronx. He has,  
3 obviously, as I said, no where to go. He has worked in the  
4 cement union continually until 2018 when he was laid off and  
5 then he was offered a job again.

6 Important also, is that he was just about to take his  
7 GED when the feds came to execute the writ and that's why he is  
8 here. So, he's ready to take his GED as soon as he can, as  
9 soon as COVID allows him to do it.

10 THE COURT: One other question and then I want to hear  
11 from the government.

12 So, if I were to release him in terms of the federal  
13 charges, he still has some time to serve on the state charges.  
14 It says here in the presentence, in the pretrial report,  
15 "conditional release date July 23", tomorrow.

16 MS. NEWMAN: Right.

17 THE COURT: But this shows my ignorance of state  
18 practice. Is that an automatic or because his, the expiration  
19 date of his sentence could be as late as December 29?

20 MS. NEWMAN: So, it is my understanding -- and I've  
21 had this in many cases. This is very common -- that the  
22 conditional is almost automatic. He's had no tickets. There's  
23 no reason to believe that would be the reason that he wouldn't.  
24 So, he's had no tickets. He only has a juvenile record. He  
25 doesn't have a lengthy record. He had the four cases that were

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3 all concurrent. So, what he has to do, what happens is that he  
4 will go back to the state for a day or two. They have to sign  
5 out. And so, this is another reason, this is really enough  
6 that really, if he doesn't sign out, you know, like complete  
7 the paperwork, then he's not placed on parole. And the time,  
8 he would have to max out. So, all this time that he's here, if  
9 he is not released is not, if in fact at the end of the day he  
10 either pleads guilty or is convicted at trial, would not unless  
11 the Court grants that time to him. So, it's very important for  
him that he does get released to the state so he can sign back,  
sign-in.

12 (Continued on next page)

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1 MS. NEWMAN: I know that's a problem for the Court,  
2 and so I thought of something that might be a little creative.  
3 I don't know whether the Court would agree that we grant bond  
4 conditionally and not -- he can't be released till all the  
5 conditions are met. So one of the conditions is he has to sign  
6 the bond. He can't -- he will be then, after he signs out,  
7 assuming the Court would agree with me, he will be brought  
8 back, he can then sign the bond, and then he'll be released.

9 THE COURT: All right.

10 MS. NEWMAN: So I circumvented the problem.

11 THE COURT: That's an interesting thought.

12 All right. Let me hear from the government.

13 MR. GUTWILLIG: Yes, your Honor. So here, and I think  
14 there was some discussion of the presumption, the charges here  
15 are a (b)(1)(A) narcotics conspiracy and a 924(c). The  
16 presumption, the burden, is on the defense to show by clear and  
17 convincing evidence that they can overcome the dangerous  
18 proposition from the presumption here. They have not done that  
19 or really, in the government's view, come close to doing that.

20 We can start with the nature and circumstances of the  
21 defendant. Your Honor, I'm happy to stand or talk into the  
22 microphone as --

23 THE COURT: No, no, that's fine. But let me ask you  
24 this: Counsel makes the point that after some early troubles  
25 when he was still quite young, he got a responsible job, he

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1 became a union member, and it was only when the financial  
2 hardships of the pandemic put him in economic distress that he  
3 resorted to activity that led to his guilty plea. So her  
4 argument, in part, is that he really isn't a danger to the  
5 community because he had grown out of his teenage troubles. He  
6 was well on his way to becoming a responsible citizen. Yes,  
7 that doesn't excuse his resorting to criminality when pressures  
8 arose. Now, I'm a little concerned about the timing there  
9 because, as near as I can tell, the events involving the  
10 various problems that occurred in 2018, 2019 were before the  
11 pandemic.

12 MS. NEWMAN: Yes. I'm sorry, your Honor, if you  
13 misunderstood. I never meant it -- he had other problems. He  
14 was laid off. Let me clarify for the record, if I may, your  
15 Honor. I'm sorry to interrupt.

16 THE COURT: Yes, go ahead.

17 MS. NEWMAN: He was laid off having nothing to do with  
18 his work, but there was no work for what he was doing. That  
19 was the first time ever that he was laid off as opposed to come  
20 back next week. And he had some other issues, personal issues,  
21 pressures about supporting his son. None of which can be  
22 excused. I'm just saying what was going on in his life because  
23 it's clear to anybody looking at the record, what happened in  
24 2018? Everything was going great in your life, and so what  
25 happened in 2018? And what happened was all of a sudden for

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1 the first time he didn't really have a steady job. He still  
2 had to support and, you know, obligations. He began to, as I  
3 said, smoke marijuana, he began to hang out with others, and  
4 that's when his mom said you're not going to be here because  
5 I'm not going to support this behavior and noting that he was  
6 not acting himself.

7 We also have to consider now, your Honor, he's been in  
8 jail for three years. He's three years older. He's,  
9 obviously, not on drugs. He's completely different. His  
10 mindset is different. His values are different. I think we've  
11 all changed as a result of COVID. He's certainly changed as a  
12 result of being incarcerated during COVID. I mean, that's --  
13 it's affected everybody's mind and how they view family  
14 differently.

15 So if I was unclear, I apologize to the Court, but it  
16 has --

17 THE COURT: Has he been vaccinated?

18 MS. NEWMAN: Excuse me?

19 THE COURT: Has he been vaccinated?

20 MS. NEWMAN: No, he has not been offered a vaccine.

21 THE COURT: He has not been offered it?

22 (Counsel conferred with defendant)

23 MS. NEWMAN: OK. He said they did offer it once at  
24 state. They didn't offer it to him because he was in  
25 quarantine. So they wouldn't -- they don't go near you if

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1 you're in quarantine. Because I've asked others in Essex,  
2 other clients now who are in Essex, and they haven't had a  
3 vaccine being --

4 THE COURT: Where is he being held right now?

5 MS. NEWMAN: In Essex. In New Jersey, in Essex  
6 County.

7 THE COURT: And is it not available there now?

8 MS. NEWMAN: I'm not sure whether if I asked it  
9 wouldn't be available. He just hasn't been offered it. As I  
10 was explaining, it's quite ironic, because for me to go into  
11 Essex and visit, I have to show my vaccination card.

12 THE COURT: The reason I'm asking that is in these  
13 unusual times, I wonder whether that's not a factor that I need  
14 to consider in terms of danger to the community.

15 MS. NEWMAN: It was on my list, and I forgot to  
16 mention it. Well, I think, no, I think the reverse. I think  
17 his right to get a vaccine and to go when he's home and to be  
18 vaccinated is an indication --

19 THE COURT: Well, are you saying, because I'm not  
20 totally sure whether I can order that as a -- maybe I can --  
21 but you're saying he would consent, as one of the conditions of  
22 release, that he would be vaccinated within a week of his  
23 release?

24 MS. NEWMAN: Yes. And they're readily available as  
25 the Court -- yes, and we discussed it. It was on my list --

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1                   THE COURT: All right.

2                   MS. NEWMAN: -- because it's very important for him  
3 because of his mother, for everybody, not only for himself,  
4 but, obviously, for his mother.

5                   THE COURT: Yes, all right. Back to the --

6                   MS. NEWMAN: Thank you.

7                   THE COURT: Thank you.

8                   MR. GUTWILLIG: So, your Honor, we've charged 13  
9 defendants in this indictment that was unsealed today. You  
10 asked me at a previous conference to place one of the  
11 defendants into context. This defendant is one of the leaders  
12 of the crew, along with Israel Garcia. Those are the two names  
13 at the top of the indictment, Israel Garcia and Jevaun Charles.  
14 Everyone else is listed alphabetically. Mr. Charles is alleged  
15 to be a leader of this crew, to be involved in drug sales, to  
16 be engaged in back-and-forth retaliatory violence with other  
17 drug crews. And there is more than ample evidence from all of  
18 this. They're from multiple social media accounts on which we  
19 conducted search warrants.

20                  THE COURT: I'm assuming the government has strong  
21 evidence, but these events all occurred before his  
22 incarceration, right?

23                  MR. GUTWILLIG: Well, yes, your Honor. I think the  
24 carjacking -- so let's just go to the conviction and the most  
25 recent arrest for which he's just been released. Certainly, he

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1 couldn't have been a danger to the community while he was in  
2 prison because he was in prison because he was a danger to the  
3 community. The arrest that we're talking about and the  
4 conviction for January 2019 when he was arrested and charged  
5 with robbery in the first degree, attempted gang assault in the  
6 first degree, and criminal possession of a firearm involved an  
7 incident where he and other members of the crew opened up a  
8 door to a car, and the defendant hit the victim in the head  
9 with a gun repeatedly. When he was in prison for that, there  
10 are multiple jail calls in that year of 2019 where he is  
11 talking about the crew's activity and what the government would  
12 submit is coded language about selling drugs with other members  
13 of the crew. There is also a recorded call which was picked up  
14 on a Title III intercept in which he is discussing a recent  
15 shooting with the crew --

16 THE COURT: This is while he's in jail?

17 MR. GUTWILLIG: While he's in jail.

18 -- with the crew, this crew, and a rival crew, talking  
19 about who was there and what happened.

20 So, respectfully, to say that he hasn't committed any  
21 further crimes in the past few years, accurate because he  
22 hasn't been able to. What he did immediately prior to that was  
23 a violent carjacking which involved a gun, and while he was in  
24 jail, he was talking about drug sales. So the dangerousness is  
25 not, in the government's view, some sort of poor behavior due

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1 to smoking marijuana or something like that, it was a violent  
2 course of conduct. And that dovetails because that incident  
3 involved other members of the crew, as did later retaliatory  
4 violence. It dovetails with the nature and circumstances, the  
5 criminal history here, and the fact that there are multiple  
6 witnesses who will call him one of the leaders of this crew  
7 which sold a significant amount of crack and also engaged in  
8 acts of violence and back and forth.

9 To the point of bail conditions, as your Honor knows,  
10 in this case the government has agreed with certain proposed  
11 bail packages. There's a good reason why we are not doing that  
12 here, and it's because of all the people on this indictment,  
13 Mr. Charles along with Mr. Garcia are, in the government's  
14 view, the most culpable and the most dangerous, and I think the  
15 criminal history that we've been through today --

16 THE COURT: All you're saying is relevant, but I want  
17 to make a distinction. The weight of the evidence and his  
18 leadership role would be most relevant if you were asserting  
19 that he was a flight risk because he would face, if convicted,  
20 presumably among the highest penalties of those in the case.

21 MR. GUTWILLIG: Certainly.

22 THE COURT: As to danger to the community, I think  
23 it's still relevant, but I think it's not quite the same. I'm  
24 more troubled, and I want to hear from defense counsel again,  
25 if he's busy while in jail figuring out how to go on with his

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1 crew, or whatever, that certainly suggests a danger to the  
2 community. What about that?

3 MS. NEWMAN: Thank you, your Honor. Of course, I  
4 don't have the discovery, so we're going -- but I will note  
5 what the government said, and I haven't listened to many tapes,  
6 as the government's conceded that they have listened to these  
7 calls in what, according to the government would state, is  
8 coded language, so it's the government's interpretation of what  
9 was said. Now, it may be well off, and I understand that we're  
10 here on bail and there's presumptions, but when we're talking  
11 about the weight of the evidence and we're talking about a  
12 concern about coded language that we don't have, then I think  
13 that one has to say it may not be what the government is  
14 interpreting it to be.

15 THE COURT: Let me ask the government. Give me an  
16 example.

17 MR. GUTWILLIG: I'm happy to provide an example, and  
18 this may not be a verbatim response. But, for example, and  
19 I'll just read it here. In May of 2019, one of the  
20 coconspirators tells Mr. Charles: "We've got mad folks out  
21 there. Boy Kenny, Boy Scout Mikey, they're out there running  
22 it. Tega and Shakur, Ken still doing whatever he's doing."  
23 And to this -- so those are identified as aliases of members of  
24 the crew -- Mr. Charles responds: "By the time this shit be  
25 done, we're not seeing the bread we supposed to be seeing."

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1                   Not a lot of ambiguity in terms of "bread."

2                   THE COURT: Yes, what about that, Ms. Newman?

3                   MS. NEWMAN: OK. So, of course, I haven't listened to  
4 it, but it does appear that a lot of that is what somebody is  
5 giving as what's outside. It kind of reminds me of whether  
6 there is a conversation to take action or it's a conversation  
7 of which I'm going to use the word of gossip. Maybe that's too  
8 minimizing by use of the word "gossip," but is it simply  
9 repeating what's happening outside? And while the government  
10 may look at that and say, why are they telling him? That  
11 doesn't mean he's the danger or that he's in any way directing  
12 anything as opposed to listening to what's happening outside.

13                   I can say, as I've asked Mr. Charles, he has -- he's  
14 not a member of a gang. He doesn't have any tattoos. He's not  
15 a Blood or a Crip or any other of the other gangs that we hear  
16 every day. So when they say a leader of a crew, what I have  
17 seen in other cases, it's just that it's somebody who the  
18 others talk about more often for whatever reason. He may not  
19 be a leader in the sense of directing is what I'm saying, and  
20 that's the distinction. And if there is another condition that  
21 this Court wants to impose that would be even stricter, I'm  
22 open to hearing it, but I'm open because what has to be found  
23 is not -- it has to be no condition, no combination of  
24 conditions.

25                   THE COURT: You're asking, what I thought I heard you

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1 say before, among other things, home confinement, yes?

2 MS. NEWMAN: That's right.

3 THE COURT: With his mother?

4 MS. NEWMAN: Right.

5 THE COURT: So let me ask the government, and assuming  
6 he's electronically monitored and the whole business, how's he  
7 going to be in a position to personally assault anyone? The  
8 most that could be said is he would be in contact with his  
9 former buddies, and I don't mean to minimize that. But it  
10 sounds like they're -- at least as of 2019, they were perfectly  
11 happy to move onwards even with him in prison.

12 MR. GUTWILLIG: Your Honor, to address a few things  
13 that defense counsel has just said, this is a crew. It is a  
14 gang. It is a set of the Young Gunnaz, YG, gang that operates  
15 on 130th and 184th Street and Morris. I cited one example of a  
16 prison call. There are others where they talk about the drug  
17 trafficking organization expanding locations and selling  
18 faster, drug supplies, amounts sold. And I mean that not only  
19 in terms of the weight of the evidence but also this isn't some  
20 sort of idle chatter. Mr. Charles' social media accounts are  
21 littered with examples of his membership and with other members  
22 of the crew and postings about 184th and YGs and crimes and  
23 other indicators of being in the crew.

24 Respectfully, location monitoring will only tell us  
25 after it happens if he goes and hits somebody again or shoots

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1 somebody. I think the argument that he couldn't be dangerous  
2 on home confinement, I mean, certainly if he stayed in his home  
3 with his mother the whole time, that would be true of any  
4 defendant, and -- or any violent defendant who's not using  
5 electronic means or otherwise. But here we have examples of  
6 him in prison for a violent offense, continuing to talk about  
7 and direct drug activity. So the idea that he's not a danger  
8 and that these drugs aren't dangerous and that the crew isn't  
9 dangerous, I just -- the government just can't agree with that.

10 THE COURT: All right. Anything further from defense?

11 MS. NEWMAN: Very quickly, your Honor. As I  
12 understood it, there are 13 people who've been arrested. I  
13 understood that to be the crew. So whether they're in jail or  
14 out on bond, it's true in any case. And the statistics -- and  
15 we just had a recent CLE on this. So maybe it's just in my  
16 mind now -- the statistics demonstrate that people on home  
17 detention do not statistically reoffend while on bond. That  
18 people on bond are not running away, cutting their bracelets.  
19 That it's few and far between that we see this or are a danger  
20 running around.

21 We know who the third-party custodian -- and I offer,  
22 if the Court would like, to question Ms. George further on how  
23 she -- why she is so confident, because I've questioned her,  
24 that she, in fact, will be sure that her son abides by all  
25 conditions of bond, which, as she knows, he cannot leave the

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1 house. So I think that whatever happened, if he committed  
2 violence, not while in jail; and social media, not while in  
3 jail.

4 THE COURT: Well, I'm pausing because I do find this a  
5 close case. Of course, it's a presumption case and that has to  
6 be taken account of, but on the other hand, what we're talking  
7 about ultimately is a constitutional right, and that can and  
8 should color the whole analysis as well.

9 I think that in the end what is most troubling to the  
10 Court are those telephone conversations. That seems  
11 inconsistent with the defense view that this was a person that  
12 has basically become a law-abiding citizen, then he got laid  
13 off, and so he resorted to crime. But the government says, no,  
14 not only did he resort to crime, he became a leader. But more  
15 or equally relevantly, even while in prison he was still in  
16 contact with his fellow crooks, and I think that is powerful  
17 evidence that he would continue to be a danger to the community  
18 even if he were fully home confined, as of course is one of the  
19 suggested conditions.

20 So I find it a close matter, but in the end, I'm going  
21 to deny the application.

22 So that concludes this proceeding.

23 (Adjourned)